United Nations S/2010/591

Security Council

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23 November 2010

Original: English

Nigeria: draft resolution

The Security Council,

Recalling its previous resolutions and statements of its President concerning the situation in Guinea-Bissau, in particular its resolution 1876 (2009),

Expressing its deep concern at the continuing instability in Guinea-Bissau, in particular the lack of civilian oversight and control of the armed forces and the continued detentions without due process of law that followed the events of 1 April 2010,

Stressing the fact that such developments demonstrate the fragility of the political situation, and jeopardize the efforts to consolidate peace and stability, as well as the rule of law in Guinea-Bissau,

Noting with deep concern the threats to national and subregional security and stability posed by the growth in drug trafficking and organized crime in Guinea-Bissau,

Recognizing the need to tackle the problem of drug trafficking in the countries of origin, transit and final destination through an approach of common and shared responsibility,

Reaffirming that the Government of Guinea-Bissau and all stakeholders must remain committed to national reconciliation through genuine and inclusive political dialogue, respect for constitutional order, security sector reform, the promotion of the rule of law and human rights, and the fight against impunity and illicit drug trafficking,

Stressing the importance of security sector reform, and reiterating the continued support of the United Nations and the international community for the long-term security and development of Guinea-Bissau, particularly in the fields of security sector reform, justice, and in building the capacity of the Government to tackle illicit drug trafficking,

Reiterating the importance of regional and subregional cooperation in addressing the challenges faced by Guinea-Bissau and in this regard *welcoming* the appointment by the Chairperson of the African Union (AU) Commission of a Special Representative as well as the establishment and operationalization of the AU Liaison Office in the country,

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Welcoming the efforts of the Economic Community of West African States (ECOWAS) and the Community of Portuguese-Speaking Countries (CPLP) to support the reform of the defence and security sector in Guinea-Bissau and encouraging the international community to remain engaged in addressing key challenges in the country,

Encouraging relevant stakeholders to remain engaged in addressing key governance and peacebuilding challenges in the country,

Welcoming the letter from President Malam Bacai Sanha dated 20 September 2010 to ECOWAS requesting support and assistance in the implementation of security sector reform in Guinea-Bissau,

Emphasizing that the Government of Guinea-Bissau bears the primary responsibility for security, the protection of its civilian population, peacebuilding and long-term development in the country,

Recalling its appreciation for the work of the Peacebuilding Commission and the United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS) in coordinating the assistance provided by the United Nations and international partners to Guinea-Bissau,

Reaffirming its full commitment to the consolidation of peace and stability in Guinea-Bissau,

1. *Decides* to extend the mandate of the United Nations Integrated Peacebuilding Office in Guinea-Bissau as established in paragraph 3 of resolution 1876 (2009), until 31 December 2011;

2. *Takes note* of the report of the Secretary-General on Guinea-Bissau dated 25 October 2010 (S/2010/550) and of the recommendations contained therein and welcomes the activities of UNIOGBIS;

3. *Requests* the Secretary-General to develop a strategic workplan with appropriate benchmarks to measure and track progress on the implementation of the UNIOGBIS mandate;

4. *Urges* the Government and all political stakeholders in Guinea-Bissau to work together to consolidate peace and stability in the country and intensify efforts for genuine and inclusive political dialogue and national reconciliation and requests the Secretary-General, including through his Special Representative, to support such efforts;

5. *Urges* members of the Armed Forces of Guinea-Bissau, in particular its leaders, to respect constitutional order, civilian rule and oversight, as well as the rule of law and human rights, to refrain from any interference in political issues, to guarantee the security of the national institutions, as well as the population in general, and to fully participate in the reform of the defence and security sector;

6. *Further urges* Guinea-Bissau's political leaders to refrain from involving the military and the judiciary in politics and calls on them to use legal and peaceful means to resolve differences;

7. *Calls on* the Government of Guinea-Bissau to conclude the investigations into the political assassinations of March and June 2009 and ensure that the results of the investigations and the work of the National Commission of Inquiry are

credible, transparent and consistent with internationally agreed standards and to ensure the prosecution of those responsible for criminal acts, so that they are held accountable;

8. *Requests* the Secretary-General to assist in the conclusion of these investigations and overall efforts to end impunity, promote the rule of law and constitutional order in Guinea-Bissau;

9. *Calls upon* the Government of Guinea-Bissau to ensure the prosecution with full respect for due process of those responsible for criminal acts, such as political assassinations and drug trafficking, and calls on the AU, ECOWAS, the European Union (EU), CPLP and bilateral partners to support these efforts;

10. *Reiterates its call upon* the authorities of Guinea-Bissau to release immediately all those detained in the events of 1 April 2010 or prosecute them with full respect for due process and to set free those under incarceration who were recently acquitted;

11. *Welcomes* the ECOWAS-CPLP partnership and looks forward to the final endorsement by ECOWAS of the road map developed by the Chiefs of Defence Staff to, inter alia, provide training and protection to Guinea-Bissau state institutions within the framework of security sector reform and as part of the stabilization of the country's political and security environment and requests the Secretary-General, through his Special Representative, to present to it comprehensive information detailing the proposed modalities, timing and resources relating to the implementation of the ECOWAS road map;

12. *Requests* the Secretary-General to engage with ECOWAS and CPLP with a view to undertaking a joint assessment of the requirements to support the rapid implementation of the road map once endorsed by ECOWAS, including, how the necessary resources can best be mobilized, in coordination with relevant partners including the AU, EU, ECOWAS and CPLP member States;

13. *Requests* the Secretary-General, through his Special Representative, to extend political support for the implementation of the road map;

14. *Urges* the Government of Guinea-Bissau to continue to tackle corruption including by implementing the United Nations Convention against Corruption and to create an environment conducive to the implementation of the West Africa Coast Initiative (WACI) in Guinea-Bissau and urges relevant national entities to establish a Transnational Crime Unit in Guinea-Bissau through adequate mechanisms;

15. *Urges* the international community, including the Peacebuilding Commission and regional organizations such as the AU, the EU, ECOWAS and the CPLP, as well as bilateral partners as appropriate, to increase their political and financial support to WACI to fight transnational organized crime and drug trafficking which threaten peace and security in Guinea-Bissau and in the subregion; *welcomes* in this regard the commitment of ECOWAS with the United Nations, the EU and other partners for the immediate implementation of the ECOWAS Regional Action Plan on Drug Trafficking and Organized Crime, including options for targeted sanctions against those individuals identified as members or supporters of the drug trafficking network, and agrees to keep the situation under active review, and to consider appropriate action;

16. *Requests* the Secretary-General, through his Special Representative in Guinea-Bissau, to continue to support national efforts to effectively coordinate international assistance for credible security sector reform under the principle of full civilian control of the military and on the basis of a comprehensive threat assessment, taking into account the work already undertaken by the EU and other international actors in this area;

17. *Requests* the Peacebuilding Commission to continue to support the implementation of Guinea-Bissau's peacebuilding priorities as well as to continue to provide advice to the Security Council on how to remove critical obstacles to peacebuilding in Guinea-Bissau, in particular security sector reform and drug trafficking and to keep the Council updated on progress it has made in helping to address these;

18. *Encourages* the Special Representative of the Secretary-General to continue to pursue efforts to enhance integration and effectiveness of the United Nations on the ground in support of the stabilization, peace and development priorities of the Government and people of Guinea-Bissau;

19. *Emphasizes* the important role of women in prevention and resolution of conflicts and in peacebuilding, as recognized in resolution 1325 (2000) and 1820 (2008), 1888 (2009) and 1889 (2009), *underlines* that a gender perspective should be taken into account in implementing all aspects of the mandate of UNIOGBIS, and encourages UNIOGBIS to work with national authorities in this regard, and relevant stakeholders to improve women's participation in peacebuilding;

20. *Requests* the Secretary-General to report on progress made in implementing this resolution and the mandate of UNIOGBIS as outlined in resolution 1876 (2009), every four months, including in his first report details of progress made in undertaking the joint assessment referred to in paragraph 12 and the implementation of the road map, once endorsed by ECOWAS;

21. *Decides* to remain actively seized of the matter.

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Austria, Bosnia and Herzegovina, Brazil, Canada, China, Denmark, France, Gabon, Germany, Greece, Japan, Lebanon, Mexico, Nigeria, Norway, Russian Federation, Somalia, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution

The Security Council,

Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), 1851 (2008), 1897 (2009), and 1918 (2010), as well as the Statement of its President (S/PRST/2010/16) of 25 August 2010,

Continuing to be gravely concerned by the ongoing threat that piracy and armed robbery at sea against vessels pose to the prompt, safe, and effective delivery of humanitarian aid to Somalia and the region, to the safety of seafarers and other persons, to international navigation and the safety of commercial maritime routes, and to other vulnerable ships, including fishing activities in conformity with international law, and also gravely concerned by the extended range of the piracy threat into the western Indian Ocean and the increase in pirate capacities,

Expressing concern about the reported involvement of children in piracy off the coast of Somalia,

Recognizing that the ongoing instability in Somalia contributes to the problem of piracy and armed robbery at sea off the coast of Somalia, and stressing the need for a comprehensive response to tackle piracy and its underlying causes by the international community,

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, including Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law, and stressing the importance of preventing, in accordance with international law, illegal fishing and illegal dumping, including toxic substances,

Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 ("The Convention"), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,

Again taking into account the crisis situation in Somalia, and the limited capacity of the Transitional Federal Government (TFG) to interdict, or upon

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interdiction to prosecute pirates or to patrol or secure the waters off the coast of Somalia, including the international sea lanes and Somalia's territorial waters,

Noting the several requests from the TFG for international assistance to counter piracy off its coast, including the letter of 20 October 2010 from the Permanent Representative of Somalia to the United Nations expressing the appreciation of the TFG to the Security Council for its assistance, expressing the TFG's willingness to consider working with other States and regional organizations to combat piracy and armed robbery at sea off the coast of Somalia, and requesting that the provisions of resolution 1897 (2009) be renewed for an additional twelve months,

Commending the efforts of the EU operation Atalanta, North Atlantic Treaty Organization operations Allied Protector and Ocean Shield, Combined Maritime Forces' Combined Task Force 151, and other States acting in a national capacity in cooperation with the TFG and each other, to suppress piracy and to protect vulnerable ships transiting through the waters off the coast of Somalia, and *welcoming* the efforts of individual countries, including China, India, Islamic Republic of Iran, Japan, Malaysia, Republic of Korea, Russian Federation, Saudi Arabia, and Yemen, which have deployed ships and/or aircraft in the region, as stated in the Secretary-General's report (S/2010/394),

Welcoming the capacity building efforts made by the International Maritime Organization (IMO) Djibouti Code Trust Fund (Multi-donor trust fund — Japan initiated), and the Trust Fund Supporting Initiatives of States Countering Piracy off the Coast of Somalia, and recognizing the need for all engaged international and regional organizations to cooperate fully,

Noting with concern that the continuing limited capacity and domestic legislation to facilitate the custody and prosecution of suspected pirates after their capture has hindered more robust international action against the pirates off the coast of Somalia, and in some cases has led to pirates being released without facing justice, regardless of whether there is sufficient evidence to support prosecution, and *reiterating* that, consistent with the provisions of the Convention concerning the repression of piracy, the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA Convention") provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation,

Underlining the importance of continuing to enhance the collection, preservation and transmission to competent authorities of evidence of acts of piracy and armed robbery at sea off the coast of Somalia, and *welcoming* the ongoing work of IMO, INTERPOL and industry groups to develop guidance to seafarers on preservation of crime scenes following acts of piracy, and noting the importance for the successful prosecution of acts of piracy of enabling seafarers to give evidence in criminal proceedings,

Commending the Republic of Kenya and the Republic of Seychelles' efforts to prosecute suspected pirates in their national courts, welcoming the engagement of the Republic of Mauritius, and *noting* with appreciation the assistance being provided by the United Nations Office of Drugs and Crime (UNODC), the Trust Fund Supporting Initiatives of States Countering Piracy off the Coast of Somalia,

and other international organizations and donors, in coordination with the Contact Group on Piracy off the Coast of Somalia ("CGPCS"), to support Kenya, Seychelles, Somalia, and other States in the region, including Yemen, to take steps to prosecute, or incarcerate in a third state after prosecution elsewhere, captured pirates consistent with applicable international human rights law, and emphasizing the need for States and international organizations to further enhance international efforts in this regard,

Welcoming the readiness of the national and regional administrations of Somalia to cooperate with each other and with States who have prosecuted suspected pirates with a view to enabling convicted pirates to be repatriated back to Somalia under suitable prisoner transfer arrangements, consistent with applicable international law including international human rights law,

Welcoming the report of the Secretary General (S/2010/394), as requested by resolution 1918 (2010), and the ongoing efforts within the CGPCS and the United Nations Secretariat to explore possible additional mechanisms to effectively prosecute persons suspected of piracy and armed robbery at sea off the coast of Somalia,

Stressing the need for States to consider possible methods to assist the seafarers who are victims of pirates, and welcoming in this regard the ongoing work within the CGPCS and the International Maritime Organization on developing guidelines for the care of seafarers and other persons who have been subjected to acts of piracy,

Further noting with appreciation the ongoing efforts by UNODC and UNDP to support efforts to enhance the capacity of the corrections system in Somalia, including regional authorities notably with the support of the Trust Fund Supporting Initiatives of States Countering Piracy off the Coast of Somalia, to incarcerate convicted pirates consistent with applicable international human rights law,

Bearing in mind the Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, and *recognizing* the efforts of signatory States to develop the appropriate regulatory and legislative frameworks to combat piracy, enhance their capacity to patrol the waters of the region, interdict suspect vessels, and prosecute suspected pirates,

Emphasizing that peace and stability within Somalia, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a durable eradication of piracy and armed robbery at sea off the coast of Somalia, and *further emphasizing* that Somalia's long-term security rests with the effective development by the TFG of the National Security Force and Somali Police Force, in the framework of the Djibouti Agreement and in line with a national security strategy,

Determining that the incidents of piracy and armed robbery at sea off the coast of Somalia exacerbate the situation in Somalia, which continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Reiterates* that it condemns and deplores all acts of piracy and armed robbery against vessels in the waters off the coast of Somalia;

2. *Recognizes* that the ongoing instability in Somalia is one of the underlying causes of the problem of piracy and contributes to the problem of piracy and armed robbery at sea off the coast of Somalia, and *stresses* the need for a comprehensive response to tackle piracy and its underlying causes by the international community;

3. *Notes again* its concern regarding the findings contained in the 20 November 2008 report of the Monitoring Group on Somalia (S/2008/769, page 55) that escalating ransom payments and the lack of enforcement of the arms embargo established by resolution 733 (1992) are fuelling the growth of piracy off the coast of Somalia, and *calls upon* all States to fully cooperate with the Somalia and Eritrea Monitoring Group including on information sharing regarding possible arms embargo violations;

4. *Renews* its call upon States and regional organizations that have the capacity to do so, to take part in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and international law, by deploying naval vessels, arms and military aircraft and through seizures and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use;

5. *Commends the work* of the CGPCS to facilitate coordination in order to deter acts of piracy and armed robbery at sea off the coast of Somalia, in cooperation with the IMO, flag States, and the TFG and *urges* States and international organizations to continue to support these efforts;

6. *Acknowledges* Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law, *recalls* the importance of preventing, in accordance with international law, illegal fishing and illegal dumping, including toxic substances, and *calls upon* States and interested organizations, including the IMO, to provide technical assistance to Somalia, including regional authorities, and nearby coastal States upon their request to enhance their capacity to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines, and stresses the importance of coordination in this regard through the CGPCS;

7. *Encourages* Member States to continue to cooperate with the TFG in the fight against piracy and armed robbery at sea, notes the primary role of the TFG in the fight against piracy and armed robbery at sea, and *decides* that for a further period of twelve months from the date of this resolution to renew the authorizations as set out in paragraph 10 of resolution 1846 (2008) and paragraph 6 of resolution 1851 (2008), as renewed by resolution 1897 (2009), granted to States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General;

8. *Affirms* that the authorizations renewed in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations, under the Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and *affirms further* that such authorizations have been

renewed only following the receipt of the 20 October 2010 letter conveying the consent of the TFG;

9. *Further affirms* that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) do not apply to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking measures in accordance with paragraph 7 above or to supplies of technical assistance to Somalia solely for the purposes set out in paragraph 6 above which have been exempted from those measures in accordance with the procedure set out in paragraphs 11 (b) and 12 of resolution 1772 (2007);

10. *Requests* that cooperating States take appropriate steps to ensure that the activities they undertake pursuant to the authorizations in paragraph 7 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State;

11. *Calls on* Member States to assist Somalia, at the request of the TFG and with notification to the Secretary-General, to strengthen capacity in Somalia, including regional authorities, to bring to justice those who are using Somali territory to plan, facilitate, or undertake criminal acts of piracy and armed robbery at sea, and *stresses* that any measures undertaken pursuant to this paragraph shall be consistent with applicable international human rights law;

12. *Calls upon* all States, and in particular flag, port, and coastal States, States of the nationality of victims, and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of all persons responsible for acts of piracy and armed robbery off the coast of Somalia, including anyone who incites or facilitates an act of piracy, consistent with applicable international law including international human rights law to ensure that all pirates handed over to judicial authorities are subject to a judicial process, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such as victims and witnesses and persons detained as a result of operations conducted under this resolution;

13. *Calls upon* all States to criminalize piracy under their domestic law and to favourably consider the prosecution of suspected, and imprisonment of convicted, pirates apprehended off the coast of Somalia, consistent with applicable international law including international human rights law;

14. *Reaffirms* its interest in the continued consideration of all seven options for prosecuting suspected pirates described in the Secretary-General's report (S/2010/394) which provide for different levels of international participation, taking into account further new information and observations from the Secretary-General based on the consultations being conducted by his Special Adviser on Legal Issues Related to Piracy off the Coast of Somalia, with a view to taking further steps to ensure that pirates are held accountable, emphasizing the need for strengthened cooperation of States, regional, and international organizations in achieving this goal, and encourages the CGPCS to continue its discussions in this regard;

15. *Urges* all States to take appropriate actions under their existing domestic law to prevent the illicit financing of acts of piracy and the laundering of its proceeds;

16. *Urges* States, in cooperation with INTERPOL and Europol, to further investigate international criminal networks involved in piracy off the coast of Somalia, including those responsible for illicit financing and facilitation;

17. *Stresses* in this context the need to support the investigation and prosecution of those who illicitly finance, plan, organize, or unlawfully profit from pirate attacks off the coast of Somalia;

18. *Commends* the establishment of the Trust Fund Supporting the Initiatives of States Countering Piracy off the Coast of Somalia and the International Maritime Organization (IMO) Djibouti Code Trust Fund (Multi-donor trust fund Japan initiated) and *urges* both state and non-state actors affected by piracy, most notably the international shipping community, to contribute to them;

19. *Urges* States parties to the Convention and the SUA Convention to fully implement their relevant obligations under these Conventions and customary international law and cooperate with the UNODC, IMO, and other States and other international organizations to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;

20. *Welcomes* the revisions by the IMO to its recommendations and guidance on preventing and suppressing piracy and armed robbery against ships, *underlines* the importance of implementing such recommendations and guidance by all stakeholders, including the shipping industry, and *urges* States, in collaboration with the shipping and insurance industries, and the IMO, to continue to develop and implement avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in the waters off the coast of Somalia, and further urges States to make their citizens and vessels available for forensic investigation as appropriate at the first port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity;

21. *Requests* States and regional organizations cooperating with the TFG to inform the Security Council and the Secretary-General in 9 months of the progress of actions undertaken in the exercise of the authorizations provided in paragraph 7 above and further requests all States contributing through the CGPCS to the fight against piracy off the coast of Somalia, including Somalia and other States in the region, to report by the same deadline on their efforts to establish jurisdiction and cooperation in the investigation and prosecution of piracy;

22. *Requests* the Secretary-General to report to the Security Council within 11 months of the adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia;

23. *Expresses* its intention to review the situation and consider, as appropriate, renewing the authorizations provided in paragraph 7 above for additional periods upon the request of the TFG;

24. *Decides* to remain seized of the matter.